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October 24, 2019

VIA FOIAONLINE.GOV

EPA Region V FOIA Coordinator

*Re: Freedom of Information Act Request: Air Operations, United States Steel – Granite City Works; Gateway Energy & Coke Company, LLC; SunCoke Energy, Inc., Granite City, Illinois*

Dear FOIA Coordinator:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”), from Great Rivers Environmental Law Center (“Great Rivers”) on behalf of concerned individuals residing in close proximity to United States Steel Corporation – Granite City Works (“US Steel”) and to Gateway Energy and Coke Company, LLC’s Granite City, Illinois plant owned by SunCoke Energy, Inc (“Gateway”). Great Rivers is a nonprofit public interest environmental organization providing free and reduced-fee legal services to individuals, organizations, and citizen groups who are working to protect the environment and public health.

**REQUESTED RECORDS**

On behalf of its clients, Great Rivers requests the following records:

1. A copy of the Title V air operating permit currently in effect for US Steel;
2. A copy of the Title V air operating permit currently in effect for Gateway;
3. A copy of any Title V air operating permit application submitted by US Steel within the last five years;

4. A copy of any Title V air operating permit application submitted by Gateway within the last five years;
5. Any air pollution control monitoring reports submitted by US Steel or Gateway within the last five years (or any datasheets demonstrating electronic submissions of such data), including but not limited to any continuous monitoring system reporting or daily fugitive particulate matter emissions reports;
6. Records of weekly enhanced inspections of the US Steel coke conveyor baghouse and big vent baghouse from the last five years;
7. Records of quarterly enhanced inspections and maintenance of US Steel pickle line scrubbers and HCl tanks from the last five years;
8. Records of any stack testing conducted at US Steel or Gateway within the last five years;
9. Any root cause failure analysis reports submitted by US Steel or Gateway within the last five years;
10. Any flue gas flow rate studies submitted by US Steel or Gateway within the last five years;
11. Any prevention maintenance and operation plans submitted by US Steel or Gateway within the last five years;
12. Any work practice plans submitted by US Steel or Gateway within the last five years;
13. Any semi-annual progress reports submitted by US Steel or Gateway within the last five years;
14. Records of any exceedances of air pollution emissions limits, notifications of air pollution control malfunctions or other violations of air pollution standards reported by US Steel or Gateway within the last five years;
15. Records from any air pollution control inspections conducted by the Illinois Environmental Protection Agency ("IEPA") or the EPA at US Steel or Gateway within the last five years;
16. Records of air pollution violations at US Steel or Gateway occurring within the last five years;
17. Records of any air pollution enforcement actions undertaken at US Steel or Gateway within the last five years, including but not limited to letters of warning, notices of violation, abatement orders, administrative orders on consent, compliance commitment agreements, settlement agreements, consent decrees or consent judgments;
18. Any other reports submitted by US Steel or Gateway to the IEPA or the EPA pursuant to the terms of their air pollution control permits;
19. Records relating to enforcement of the Consent Decree in relation to the Gateway Energy and Coke Company plant in Granite City, Illinois (and not in relation to the Haverhill Coke Company LLC plant in Franklin Furnace, Ohio) in the matter of *United States of America et al. v. Gateway Energy & Coke, LLC et al.*, Cause No. 3:13-cv-00616-DRH-SCW, filed in the United States District Court for the Southern District of Illinois, East St. Louis Division, on June 26, 2013;
20. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraphs IV, V and VI of the Consent Decree described in paragraph 19 above in relation to the Gateway Energy and Coke Company plant in Granite City, Illinois (and not in relation to the Haverhill Coke Company LLC plant in Franklin Furnace, Ohio);

21. Records relating to enforcement of the Consent Decree in relation to the Gateway Energy and Coke Company plant in Granite City, Illinois (and not in relation to the Haverhill Coke Company LLC plants in Franklin Furnace, Ohio or Middletown, Ohio) in the matter of *United States of America et al. v. Gateway Energy & Coke Company, LLC et al.*, Cause No. 3:13-cv-00616-DRH-SCW, filed in the United States District Court for the Southern District of Illinois, East St. Louis Division, on November 10, 2014;
22. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraphs IV, V and VI of the Consent Decree described in paragraph 21 above in relation to the Gateway Energy and Coke Company plant in Granite City, Illinois (and not in relation to the Haverhill Coke Company LLC plants in Franklin Furnace, Ohio and Middletown, Ohio);
23. Records relating to enforcement of the Consent Decree in relation to US Steel's Granite City Works Facility located at 20<sup>th</sup> and State Street in Granite City, Illinois (and not US Steel's other facilities at issue in the case) in the matter of *United States of America et al. v. United States Steel Corporation*, Cause No. 2:12-cv-304-PPS-APR, filed in the United States District Court for the Northern District of Indiana, Hammond Division, on November 22, 2016 and approved, signed and entered as a final judgment March 30, 2017;
24. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraphs V, VI and VII of the Consent Decree described in paragraph 23 above in relation to US Steel's Granite City Works Facility located in Granite City, Illinois (and not US Steel's other facilities at issue in the case);
25. Records relating to enforcement of the Compliance Commitment Agreement in the matter *In the Matter of United States Steel Corporation*, concerning Illinois Environmental Protection Agency Violation Notice A-2017-00150, filed in the Bureau of Air on April 9, 2018;
26. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraph III of the Compliance Commitment Agreement described in paragraph 25 above;
27. Records relating to enforcement of the Compliance Commitment Agreement in the matter *In the Matter of Gateway Energy & Coke Company, LLC*, concerning Illinois Environmental Protection Agency Violation Notice A-2016-00185, filed in the Bureau of Air on April 24, 2017;
28. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraph III of the Compliance Commitment Agreement described in paragraph 27 above;
29. Records relating to enforcement of the Compliance Commitment Agreement in the matter *In the Matter of Gateway Energy & Coke Company, LLC*, concerning Illinois Environmental Protection Agency Violation Notice A-2015-00064, filed in the Bureau of Air on April 4, 2016; and
30. Records evidencing that US Steel and Gateway have undertaken all actions required in paragraph III of the Compliance Commitment Agreement described in paragraph 29 above.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in the EPA’s possession and control. If such records are no longer under the control of the EPA but were at any time, please refer this request to the relevant federal agency or agencies. This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b). Great Rivers and its clients are willing to receive records on a rolling basis.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format

requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily-accessible” means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “profiles” or “embedded files.” Profiles and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

### **RECORDS DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Great Rivers or its clients taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Sarah Rubenstein  
Great Rivers Environmental Law Center  
319 N. 4<sup>th</sup> St., Suite 800  
St. Louis, MO 63102  
srubenstein@greatriverslaw.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (314) 231-4181 to discuss the scope of this request.

### **REQUEST FOR FEE WAIVER**

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *U.S. Dept. of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA’s fee waiver requirement is “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Great Rivers and the individuals it represents with access to government records without the payment of fees. Indeed, FOIA’s fee waiver provision was intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.” *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added). As

one Senator stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information ...” 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. Great Rivers and its Clients Qualify for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The EPA’s regulations at 40 C.F.R. § 2.107(1)(2) and (3) establish the same standard. Thus, the EPA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. As shown below, Great Rivers and its clients meet each of these factors.

A. The Subject of This Request Concerns “The Operations or Activities of the Federal Government.”

The subject matter of this request concerns the operations and activities of the EPA at US Steel and Gateway. The request seeks records concerning the EPA’s regulatory activities with respect to air pollution control at both facilities. The request will provide Great Rivers and its clients with crucial insight into whether US Steel and Gateway are in compliance with relevant air pollution control laws and regulations, whether they have committed violations, and what type of regulatory or enforcement response the EPA has taken in response thereto. It is clear that evaluating the requested records will provide Great Rivers and its clients with reasonably specific insight into the EPA’s decisions regarding the regulation of air pollution from the US Steel and Gateway facilities. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, Great Rivers and its clients meet this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records will be meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public. Disclosure of the requested records will allow Great Rivers and its clients to ascertain the status of US Steel’s and Gateway’s compliance with relevant air pollution control statutes and regulations, and the EPA’s regulatory decisions with respect to the two facilities. In addition, the requested records will permit Great Rivers and its clients to convey to other Granite City residents information about any impact the two facilities have had on Granite City’s air quality. Based on

Great Rivers' and its clients' ability to disseminate this type of information to the public as described in Section II below, disclosure of the requested records is likely to contribute to a broader public understanding of the EPA's operations and activities in the Granite City area.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Granite City's Air Quality and the Data the EPA Evaluated in Regulating the Area.

The requested records will contribute to public understanding of the air quality in the Granite City area, the impact US Steel and Gateway have had on air quality, what analysis and decision-making steps have been taken by the EPA regarding regulation and enforcement activities at the two facilities, and whether those steps are consistent with facility permits and applicable statutes and EPA regulations. What EPA considers when evaluating and deciding how it will regulate sources of air pollution generally, and US Steel and Gateway specifically, are areas of interest to a reasonably broad segment of the public, especially for residents of Granite City such as Great Rivers' clients, who live in close proximity to the two facilities. Great Rivers' clients, with Great Rivers' assistance, will use any information they obtain from the disclosed records to educate their immediate neighbors as well as other residents of Granite City about the air quality of their neighborhood and community. See *Western Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Great Rivers' clients intend to disseminate the information contained in any responsive records received as a result of their FOIA request to their neighbors and other Granite City property owners and residents. As landowners and residents of the immediate neighborhood occupied by both US Steel and Gateway, Great Rivers' clients are uniquely suited to distribute information to their neighbors and other potentially impacted individuals. Further, Great Rivers intends to assist their clients in evaluating the information contained in the records and disseminating that information through the means discussed in Section II below. As a result, disclosure of the requested information will result in the distribution of information about Granite City air quality to a broad audience of persons who are interested in the subject matter. *Ettlinger*, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dept. of Justice*, 19 F.3d 807, 814-15 (2nd Cir. 1994), cert. denied, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Community Legal Services. v. Dept. of Housing & Urban Development*, 405 F. Supp. 2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

Indeed, the public does not currently have the ability to easily evaluate the requested records, which concern how the EPA has made such decisions to regulate air pollution from US Steel and Gateway, because the requested records are not publicly available. See *Community Legal*

*Services*, 405 F. Supp. 2d at 560 (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations....”

Disclosure of the requested records is not only “likely to contribute,” but is certain to contribute, to public understanding of what steps EPA has taken regarding the air quality in the Granite City area, the impact US Steel and Gateway have had on air quality, what analysis and decision-making steps have been taken by the EPA regarding regulation and enforcement activities at the two facilities, and whether those steps are consistent with facility permits and applicable statutes and EPA regulations. Neither facility’s Title V air pollution permits are available online, nor are records of the facilities’ compliance or non-compliance with the terms of their permits, applicable statutes or relevant EPA regulations. The requested records are, therefore, new. The public is always well-served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records will educate the public about EPA operations and activities.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

Great Rivers and its clients are not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of what steps EPA has taken to regulate two of the most significant sources of air pollution in the Granite City area, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about how EPA is complying with the Federal Clean Air Act and its own agency regulations. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, Great Rivers and its clients meet this factor as well.

II. Great Rivers and its Clients Will Publicly Disseminate the Requested Information.

Once the requested information is made available, Great Rivers intends to analyze it and present its conclusions to its clients. Great Rivers’ clients will then share the synthesized information with their neighbors and other Granite City residents. It intends to do so by speaking directly with their neighbors, and by sharing the information on social media. As landowners and residents of the immediate neighborhood occupied by both US Steel and Gateway, Great Rivers’ clients are uniquely suited to distribute information to their neighbors and other potentially impacted individuals. Further, Great Rivers intends to assist its clients with dissemination of the synthesized information. Great Rivers is a 501(c)(3) non-profit organization committed to providing free and reduced-fee legal services to individuals, organizations and citizen groups working to protect the environment and public health. The organization works to protect the



environment and public health by counseling the public regarding environmental and public health issues. The organization has over 400 annual donors, and many hundreds more people and organizations who are not donors receive its newsletters, news releases and social media posts. These media are used to disseminate information relating to issues that Great Rivers is working on for its clients so that the public may better understand the activities engaged in by government agencies. Great Rivers has been involved in the oversight of numerous government agencies for years and has consistently displayed its ability to disseminate information granted to them through FOIA. Thus, it is clear that the requested records will contribute to an understanding of EPA operations and activities and Great Rivers and its clients will disseminate the requested information broadly.

Public oversight and enhanced understanding of the EPA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney*, 19 F.3d at 815. Great Rivers and its clients need not show how they intend to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for Great Rivers and its clients to show how they distribute information to the public generally. *Id.* Nevertheless, Great Rivers and its clients will disseminate the information as described above in this instance, and Great Rivers clearly has demonstrated an ability to do so generally in the past.

### III. Obtaining the Requested Records is of No Commercial Interest to Great Rivers or its Clients.

Great Rivers' clients' desire to access the requested records arises out of their own personal concern about the quality of the air in their community. These individuals, property owners in the residential neighborhood they share with US Steel and Gateway, have no commercial interest in the requested records. Instead they seek to obtain copies in order to learn more about two of the most significant sources of air pollution in their neighborhood, and to determine whether the EPA is properly controlling air pollution from those facilities within acceptable levels. Great Rivers' clients' intention is to use any information obtained to educate their fellow neighbors and other Granite City residents about the quality of air in their community. Clearly, their request does not arise out of any commercial interest.

Further, as mentioned above, Great Rivers, is a non-profit 501(c)(3) organization committed to providing free and reduced-fee legal services to individuals, organizations and citizen groups working to protect the environment and public health. Great Rivers provides legal representation only in situations where traditional for-profit legal representation would not otherwise be available, working purely out of an interest in protecting the environment and public health. Accordingly, Great Rivers also has no commercial interest and will realize no commercial benefit from the release of the requested records.

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IV. Conclusion

For all of the foregoing reasons, Great Rivers' clients qualify for a full fee-waiver. We hope that the EPA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (314) 231-4181 or [srubenstein@greatriverslaw.org](mailto:srubenstein@greatriverslaw.org). All records and any related correspondence should be sent to my attention at the address above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sarah Rubenstein', with a stylized, flowing script.

Sarah Rubenstein  
Staff Attorney